



**CITY OF LODI
COUNCIL COMMUNICATION**

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AGENDA TITLE: Adopt Resolution Authorizing the City Manager to Execute Agreement Between the County of San Joaquin and the Cities of Stockton, Lodi, and Tracy to Toll Statutes of Limitations for Claims Regarding Property Tax Administration Fees

MEETING DATE: April 15, 2009 City Council Meeting

PREPARED BY: City Attorney's Office

RECOMMENDED ACTION: Adopt Resolution Authorizing the City Manager to Execute Agreement Between the County of San Joaquin and the Cities of Stockton, Lodi, and Tracy ("Cities") to Toll Statutes of Limitations for Claims Regarding Property Tax Administration Fees

BACKGROUND INFORMATION: The State Controller issued a memo contending that counties statewide are overcharging cities for calculating the property tax administration fees (the "PTAF"), regarding the Triple Flip (Revenue & Taxation Code §97.68) and the Vehicle License Fee swap (Revenue & Taxation Code §97.70).

The issue has already resulted in litigation between several cities and counties in California. In order to avoid legal expenses, City and County staff propose that the parties enter a tolling agreement (essentially extending the Statute of Limitations for the Cities to sue if an agreement cannot be reached) to allow the existing litigation to proceed and base any future negotiations regarding adjustments on the outcome of the pending cases.

FISCAL IMPACT Potential refund of PTAF fees paid to County if litigation comes out in favor of cities.

A handwritten signature in black ink, appearing to read "Stephen Schwabauer".

Stephen Schwabauer, City Attorney

APPROVED:

A handwritten signature in black ink, appearing to read "Blair King".

Blair King, City Manager

**AGREEMENT BETWEEN THE COUNTY OF SAN JOAQUIN AND
THE CITIES OF STOCKTON, LODI, AND TRACY TO TOLL
STATUTES OF LIMITATIONS FOR CLAIMS REGARDING
PROPERTY TAX ADMINISTRATION FEES**

WHEREAS, the City of ~~Stockton~~, a charter city; the City of Lodi, a municipal corporation; the City of Tracy, a municipal corporation (collectively the "Cities"); and the County of San Joaquin (the "County") (collectively, the "Parties") may become involved in litigation regarding the County's calculation of the property tax administration fees (the "PTAF"), as related to the Triple Flip (Rev. & Tax Code § 97.68) and the Vehicle License ~~Fee~~ swap (Rev. & Tax Code § 97.70) that the County charges the Cities, pursuant to the Revenue and Taxation Code, beginning in the fiscal year ~~2004-2005~~; and

WHEREAS, conflicting legal opinions as to the calculation of the PTAF have been rendered by various state and local agencies and their counsel; and

WHEREAS, the Cities may have filed, or intend to file, claims (although the Cities do not concede the legal necessity to do so) and to otherwise pursue legal remedies seeking refunds of the amount of PTAF that the Cities claim the County has overcharged them in the 2006-2007 and 2007-2008 fiscal years and to obtain declaratory and/or injunctive relief regarding the calculation of the PTAF in future years; and

WHEREAS, the Cities and County are aware that other cities and counties in other areas of the State are involved, or may become involved, in litigation concerning the calculation of the PTAF; and

WHEREAS, the Parties desire to avoid litigation in order to allow for additional time to evaluate the law as it develops on this state-wide issue;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. The Parties agree to toll the applicable statutes of limitations and applicable claims filing periods for any party to file a claim, complaint, or petition against another party with respect to the calculation of the PTAF, including, but not limited to, the applicable statutes of limitations for the Cities to file a complaint, petition, or administrative claim seeking a refund or reallocation to the Cities of the PTAF that the Cities contend the County overcharged them in the 2006-2007 and 2007-2008 fiscal years, which the Cities contend resulted or has the potential to result in an under-allocation of property **taxes** to the Cities; and including, but not limited to, the applicable statutes of limitations for the County to file a complaint, petition, or administrative claim seeking an increase or reallocation to the County of the PTAF the County may contend the County may have undercharged the Cities in any fiscal years.

2. This tolling agreement (also referred to hereafter as the "Agreement") does not revive any statute of limitations period, claims **filing** period, or deadline that expired before the effective date of this tolling agreement. This-tolling agreement applies solely to those claims that could be alleged as of the effective date of this **tolling** agreement in either (i) an administrative claim to the County or the City pursuant to the applicable provisions of the Government Claims Act and/or a County or City ordinance or (ii) a lawsuit. The tolling agreement does not apply to any claims that could not be alleged **as** of the effective date of this tolling agreement in an administrative claim to the County or the City pursuant to the applicable provisions of the Government Claims Act and/or any County or City ordinance or in a lawsuit.

3. The purposes of this tolling agreement are to avoid litigation and to permit the Parties additional time to evaluate the law as it develops on this state-wide issue.

4. The Cities and the County agree not to file any claims and not to initiate or participate in litigation against each other related to the PTAF while this Agreement is in effect.

5. The tolling period for the Cities and the County extends from the effective date of this tolling agreement until the earlier of the following:

a. The expiration of forty-five (45) days from the date one Party ("the terminating party") delivers to the other Parties via ~~certified~~ mail and facsimile at the addresses and facsimile machine numbers set forth in Section 8 below, written notice that the terminating party desires to terminate this tolling agreement, and is, in fact, terminating this tolling agreement; or

b. July 1, 2012.

6. This Agreement constitutes the entire understanding of the Parties with respect to the tolling of the Cities' and the County's claims as set forth in Section 1 above and correctly states the rights, duties, and obligations of each Party as of the effective date of this Agreement. Any prior understandings, promises, negotiations, or representations between the Parties not expressly stated in this document are not binding.

7. Subsequent modifications of this Agreement, including, but not limited to, the extension ~~or~~ amendment of the Agreement, shall not be valid or effective unless ~~set~~ forth in writing and signed by the Parties. The Parties acknowledge that this Agreement applies to potential claims that may be brought by the Cities regarding the calculation of PTAF for future fiscal years, until such time as the Agreement is terminated pursuant to Section 5.

8. Notices under this Agreement, including specifically notice under Section 5.a above, shall be given as follows:

a. To the City of Stockton, notice shall be given to both the City Attorney and to the attorney specially representing the City in this matter. Benjamin P. Fay, at the following addresses:

Richard E. Nosky, Jr.
City Attorney
425 N. El Dorado Street
Stockton, CA 95202
(209) 937-8898 FAX

Benjamin P. Fay
Jarvis, Fay, Doporto & Gibson. LLP
475 14th Street, Suite 260
Oakland, CA 94612
Fax: (510) 238-1404

- b. To the City of Lodi, notice shall be given to the City at the following address:

D. Stephen Schwabauer
City Attorney
221 West Pine Street
Lodi, CA 95240
(209) 333-6807 FAX

- c. To the City of Tracy, notice shall be given to the City at the following address:

Daniel Scdergren
Interim City Attorney
333 Civic Center Plaza
Tracy, CA 95376
(209) 831-6137 FAX

- d. To the County, notice shall be given to County Counsel at the following address:

David E. Wooten
County Counsel
222 East Weber Avenue, Room 711
Stockton, CA 95202
(209) 468-0315 FAX

9. The Parties agree that this Agreement shall be effective upon its execution by all Parties.

10. Each of the undersigned hereby represents and warrants that he or she is authorized to execute this Agreement on behalf of the respective parties to this Agreement.

11. This tolling agreement may be executed in counterparts, and each fully executed counterpart will be considered an original document.

APPROVED AS TO FORM AND CONTENT: **COUNTY OF SAN JOAQUIN**

DAVID E. WOOTEN
COUNTY COUNSEL

By: _____
ADRAIN VAN HOUTEN
COUNTY AUDITOR-CONTROLLER

By: _____

DATED: _____

APPROVED AS TO FORM AND CONTENT:

CITY OF STOCKTON

RICHARD E. NOSKY, JR.
CITY ATTORNEY

By: _____
J. GORDON PALMER, JR.
CITY MANAGER

By: _____
JOHN M. LUEBBERKE
ASSISTANT CITY ATTORNEY

DATED: _____


ATTEST:

KATHERINE GONG MEISSNER
CITY CLERK

APPROVED AS TO FORM AND CONTENT

CITY OF LODI

D. STEPHEN SCHWABAUER
CITY ATTORNEY

By: _____


By: _____
BLAIR KING
CITY MANAGER

DATED: _____

ATTEST:

RANDI JOHL, J.D.
CITY CLERK

APPROVED AS TO FORM AND CONTENT:

CITY OF TRACY

DANIEL SODERGREN
INTERIM CITY ATTORNEY

By: _____

By: _____
LEON CHURCHILL, JR.
CITY MANAGER

DATED: _____

RESOLUTION NO. 2009-45

A RESOLUTION OF THE LODI CITY COUNCIL
AUTHORIZING THE CITY MANAGER TO EXECUTE
AGREEMENT BETWEEN THE COUNTY OF
SAN JOAQUIN AND THE CITIES OF STOCKTON, LODI,
AND TRACY TO TOLL STATUTES OF LIMITATIONS
FOR CLAIMS REGARDING PROPERTY TAX
ADMINISTRATION FEES

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WHEREAS, a controversy exists regarding the County's calculation of the property tax administration fees regarding the Triple Flip (Revenue & Taxation Code §97.68) and the Vehicle License Fee swap (Revenue & Taxation Code §97.70). California cities are universally contending that counties are overcharging for their administration fee; and

WHEREAS, in order to avoid legal expenses, City and County staff propose that the parties enter a tolling agreement (essentially extending the statute of limitations for the cities to sue if an agreement cannot be reached) to allow existing litigation to proceed and base any future negotiations regarding adjustments on the outcome of the pending cases.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute agreement between the County of San Joaquin and the cities of Stockton, Lodi, and Tracy to toll statutes of limitations for claims regarding property tax administration fees.

Dated: April 15, 2009

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I hereby certify that Resolution No. 2009-45 was passed and adopted by the City Council of the City of Lodi in a regular meeting held April 15, 2009, by the following vote:

AYES: COUNCIL MEMBERS – Hitchcock, Johnson, Katzakian, and
Mayor Hansen

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – Mounce

ABSTAIN: COUNCIL MEMBERS – None


RANDI JOHL
City Clerk